



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/145859

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 08, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's FS for November and December 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 20, 2012 petitioner was released from incarceration and applied for FS for herself and her three children. See Exhibit 2.

3. While petitioner was previously incarcerated, her three children were included on and received FS through petitioner's sister's FS case.
4. By November 9, 2012 the agency had already processed and issued the FS for petitioner's children on her sister's case for November and December. See Exhibit 1.
5. On November 21, 2012 the agency issued a notice of decision to petitioner stating that her children were not eligible for FS on her case as the FS had already been issued to them on another case (her sister's). See Exhibit 3.

DISCUSSION

FoodShare regulations state that a household is composed of a "group of individuals who live together and customarily purchase food and prepare meals together for home consumption." See 7 C.F.R. §273.1(a). Wisconsin's policy is clear in requiring that the child cannot be a member of more than one FS group in the same month. The policy is found in the *FoodShare Wisconsin Handbook*, §3.4.1, available online at <http://www.emhandbooks.wi.gov/fsh/>, and provides the following guidance in these situations:

A person cannot be a member of more than 1 food unit and 1 FS group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Illinois issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16th through 15th). Wisconsin issues on a calendar month cycle.

FS Handbook, §3.4.1; see also 7 CFR 273.3(a).

At the hearing, the petitioner agreed that her children had been receiving FS on her sister's case while she had been incarcerated. There is no evidence that her children were residents of a shelter for battered children. Her argument was that her sister had requested that the agency take the children off of her case "some time prior to November 15, 2012." There was no evidence to support this in the agency's files and the petitioner had none either. Aside from the proof issue about the sister's request being ever made, it is unclear *when* that request was made to know if it had been made before the issuance of the FS on November 9. The agency budgets FS prospectively on a calendar month cycle. See *FS Handbook*, §§1.2.4 and 3.4.1. Thus, November's FS had already been determined before any request in November was made, and December's FS was already determined by the 9th. Further, if the request was made prior to the 9th, the children presumably would have had no FS, with no case to be on, until petitioner filed her application. Here, the children were issued their FS, which is ultimately what petitioner seeks. Unfortunately, she would have had to get that from her sister for the end of November and the month of December.

There is no exception to this policy. Thus, I must find that the agency properly denied the FS as to her children for November and December because the children were already receiving FS on her sister's case.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's FS for November and December 2012.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

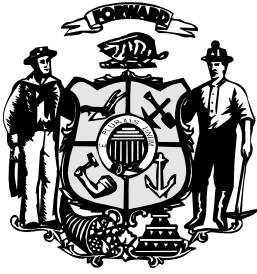
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of January, 2013

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 30, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability